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Property rights better protected in Florida

July 8, 2005

Q: I read that a recent court decision now allows any city to take a person's property for any reason. Is this true? Will this decision allow any city in Florida to take a person's property if it believes that it will help the economic development?

A: The right of the government to take private property for public use was addressed last week by the U.S. Supreme Court. The definition of "eminent domain," which allows a municipality or governmental unit to take your private property when it is to be used for a public purpose, was expanded in a 5-4 ruling.

In the past, a municipality or governmental authority would seek to take your private property if it was to build or expand a road, highway or utility.

In its recent ruling, the Supreme Court was presented with an issue where the city of New London, Conn., wanted to take private property so that offices, a hotel and other new commercial property could be built. The city argued that it needed the property for economic development. In its ruling, the Supreme Court has taken the position that a city can take your private property if it demonstrates that the property will benefit the economic development of the city.

Florida Attorney General Charlie Crist was asked how this ruling might affect Florida property owners. Crist stated:

"Florida's Constitution, as interpreted by the courts, and Florida statutory law provide greater protection of private property rights than either the U.S. Constitution or Connecticut law.

"Under Florida law, only if property is designated as a blighted area can it be taken through the extraordinary power of eminent domain for redevelopment, and then only if it would primarily serve a public purpose.

Quite simply, eminent domain is not available in Florida if the benefit to a private party is the paramount purpose of the project. While it is usually true that every new business, manufacturing facility or industrial plant will provide some benefit to the city in which it is located, under Florida law these benefits to the public are not sufficient by themselves to allow for the taking of private property.

"The Florida Legislature long ago established laws to protect homeowners' property rights. Florida law allows for the taking of private property for redevelopment purposes only where there exists a substantial number of deteriorated structures, economic distress or danger to life or property, as well as

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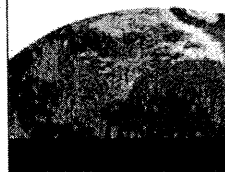
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other additional requirements. In short, an area must be proven to be 'blighted' before government can begin the process of taking private property for private redevelopment."

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